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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/371,760	08/10/1999	TOMOYUKI FUNAKI	25484.00750	9629

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MORRISON & FOERSTER, LLP
555 WEST FIFTH STREET
SUITE 3500
LOS ANGELES, CA 90013-1024

EXAMINER

NOLAN, DANIEL A

ART UNIT	PAPER NUMBER
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2654

30

DATE MAILED: 02/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/371,760

Applicant(s)

FUNAKI, TOMOYUKI

Examiner

Daniel A. Nolan

Art Unit

2654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5 and 22-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5, 22, 24 and 26 is/are allowed.
- 6) ☒ Claim(s) 23, 25 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 August 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Response to Amendment

2. The response filed 31 December 2003 has been entered to the following effect:
 - Claims 6-21 are cancelled and the objections and rejections are withdrawn as moot.

Response to Arguments

3. Applicant's arguments filed 31 December 2003 have been fully considered but they are not persuasive.

The contention that the maze width being set before the exercise begins teaches against the features of the claim happens not to be the case, as Zimmerman provides reference signal (55 in figure 2, see column 10 lines 12-26).

In response to applicant's argument that the *width can vary the difficulty of the exercise*, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a

Art Unit: 2654

process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Claim Rejections - 35 USC § 102

Zimmerman^{'789}

4. Claims 23, 25 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Zimmerman^{'789} (U.S. Patent 5,287,789).

Regarding claims 23, 25 and 27, Zimmerman^{'789} discloses the feature that an input section that receives sound signals to be analyzed (2nd line of Abstract), a characteristic extraction section (column 5 lines 21-22) that extracts at least one of upper & lower pitch limits of a sound signal as it is received by said input section and a setting section used by Zimmerman^{'789} (470 in figure 12) which discloses the feature that sets various parameters for use in subsequent analysis of sound signals received by said input section in accordance with the pitch limits (column 20 lines 7-8) characteristics of the sound signal extracted by said characteristic extraction section (55 in figure 2, see column 10 lines 12-26), including at least a threshold value (465 in figure 12) as well as reading on the feature of a display section that visually displays the pitch limits characteristics.

Allowable Subject Matter

5. Claims 22 & 5, 24 and 26 are allowed.
6. The following is a statement of reasons for the indication of allowable subject matter:
- Claims 22, 24 and 26 identify the uniquely distinct features of *"extracting volume levels, setting thresholds and displaying both levels and thresholds."*
 - The closest prior art, Zimmerman⁷⁸⁹, discloses the feature that *an input section that receives sound signals to be analyzed (2nd line of the Abstract), a characteristic extraction section that extracts a volume level of a sound signal as it is received by said input section ("amplitude" in 4th line of the Abstract); and sets various parameters for use in subsequent analysis of sound with the volume level of the sound signal extracted by said characteristic extraction section, including at least a threshold value (column 17 lines 25-28) and displays keeping a pitch within range (figure 12).*

Because the characteristics of volume and pitch are not intrinsically similar, the simultaneous display of both volume and volume thresholds would not be considered to be an intuitive equivalent of the pitch example and so the prior art of record fails to anticipate or render the above underlined limitations obvious.

- Claim 5 depends on a claim that was allowed and so does it become allowable as a consequence.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Daniel A. Nolan at telephone (703) 305-1368 whose normal business hours are Mon, Tue, Thu & Fri, from 7 AM to 5 PM.

If attempts to contact the examiner by telephone are unsuccessful, supervisor Richemond Dorvil can be reached at (703)305-9645.

The fax phone number for Technology Center 2600 is (703)872-9314. Label informal and draft communications as "DRAFT" or "PROPOSED", & designate formal communications as "EXPEDITED PROCEDURE". Formal response to this action may be faxed according to the above instructions,

Art Unit: 2654

or mailed to: Mail Stop AF (or CPA, etc. – see Official Gazette, 04 November 2003)
P.O. Box 1450
Alexandria, VA 22313-1450

or hand-deliver to: Crystal Park 2,
2121 Crystal Drive, Arlington, VA,
Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Technology Center 2600 Customer Service Office at telephone number (703) 306-0377.

Daniel A. Nolan
Examiner
Art Unit 2654

DAN/d
February 1, 2004


RICHEMOND DORVIL
SUPERVISORY PATENT EXAMINER